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The Office notes that claims 179-182,184-187,189-198 are rejected under 35 U.S.C. 102(b) as being anticipated by Musher (US 2217700).

The Office also notes that Musher teaches ice cream on an edible support having at least two discernable edible members wherein one portion extends into the ice cream and one portion extends out of the ice cream for holding. The end of the stick may include a lollipop that is also connected structure pieces (page 5, column 1, lls. 54-65) which may include items such as nuts or even a plurality of candy pieces (page 3, column 2, lls. 14-21)

Applicant's claim 179 and 189 recite:

"a composite candy support comprising two discernable edible members in contact with each other suitable for supporting said frozen comestible, said two discernable edible members each being other than an edible coating, said composite candy support having a first portion extending into said frozen comestible....,"

Musher recites:

"The stick 18 may be of the same material as the enlargements 19, and **this entire stick may either be of wood or of other similar materials or it may be of an edible baked or toasted product**. (Page 6, column 1, lls. 43-47)

To the contrary, Musher factually recites that his "entire stick" is of an edible baked or toasted product. Therefore it comprises "an" or only ONE discernable member, not two. Musher had not thought to construct a support having two discernable members,

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nor a support that even comprises candy. A lollipop subsequently attached to his baked or toasted product is a clear addition to his already-made entire baked or toasted support, and is not a composite support. Figures 1-5 and their description demonstrate this support, if edible, to be only an edible baked or toasted product. In Figure 6, Musher adds a hard candy lollipop to the already constructed supports of Figures 1-5. Accordingly, the support of Figure 6 does not depend upon the lollipop to complete the support. Musher does NOT anticipate Applicant's candy composite support comprising two discernable members, either explicitly or inherently.

The Office suggests that the lollipop and the stick are "connected structure pieces." (page 5, column 1, lls. 54-65)

Musher's "connected structure pieces," are not within the confines of Musher's entire support. Musher does not have the novel physical structure of two discernable members in the support, as does Applicant. A lollipop is subsequently adhered to the exterior top of a single member baked support. As additionally evidenced that the support of Figure 6, is a single member stick and not a stick having two discernable members, Page 5, column 2, lls. 4-8, recites:

"Also other binding agents may be used in place of the hard fat. However, with other types of binders, drying or heating may be necessary to have the candy adhere, rather than a cooling procedure, as in the case of fat."

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Musher's words provide the factual basis of his patent. Musher recites that drying or heating may be needed for the candy to "adhere" to the stick. *Therefore the candy, being remote from the stick, is not a member of the stick.*

Musher also recites: *the stick or holder may be placed and fastened by adhesion within the unit structure after the structure is completed. Or, a piece of spear-shaped hard candy, which has first been attached to the stick in lollipop form, is imbedded into the flake-fat-milk combination while it is being molded.* (Page 5, column 1, lls. 26-32) and

*The candy material which is attached to the stick, may be not in just one piece , but it may be in ribbon form, ...)* (Page 5, column 2, lls. 24-26) and

In addition, both claim 1 and claim 6 recite: "A frozen confection having extended thereinto a hand holder member, said hand holder member being anchored within said frozen confection by attachment to a structure which is contained at least within a portion of the frozen confection..."

Musher's candy lollipop (solid piece structure, above) factually needing: "adhering" and "attaching to" the stick, also factually demonstrates that the lollipop is NOT a PART of the stick.

**Musher Has Recited His Entire Stick is Entirely Made of An Edible Baked or Toasted Product**

As the Office notes, page 3, column 2, lls. 14-21) recites: "the flakes, or shreds, or laminations, or other structure pieces that are used in the structure may have, mixed with them, or coated, or otherwise applied or adhered to them, various flavoring or food materials as for instance powdered milk, cinnamon, powdered cream, cocoa or more solid materials as for instance raisins, or

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nuts, or various essential oils, or other liquid flavoring materials."

Musher's flakes, shreds, or laminations, or other structure (i.e. ice cream structure - see page 1, column 1, lls. 11-12) pieces, including nuts, or raisins are interspersed in the ice cream and are NOT situated IN the support. The structure unit is attached to the outside of the stick, beyond an edible coating. (Figures 1-6) (page 1, column 1, lls. 9-17) Musher does not have nuts, raisins or other pieces in the support. The boundary that defines Musher's edible support comprises only a baked or toasted product, as above. Musher's support is complete without his lollipop, nuts and candy pieces.

The factual basis of Musher's patent is that his support does not comprise two discernable members, or even candy, but in its entirety is a single member baked or toasted product.

**Musher Applies a Coating of Hard Fat to an Edible or Baked Product having Only One Discernable Member.**

In addition, the Office notes that the lollipop and structure pieces may be coated in hard fat, which would prevent the transfer of moisture and improve the adhesion of grip of the frozen comestible.

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Applicant's claims 182, and 192 recite:

"... further including an edible moisture barrier on said composite candy support for preventing the transfer of moisture from said frozen comestible to said composite candy support, said moisture barrier further includes texture for extra adherence of said frozen comestible to said composite candy support, said texture further provides an easier grip.

Musher has added a hard fat to the lollipop and structure pieces for adhering each to the other. Applicant's coating is added to prevent the transfer of moisture and provide a better grip to an edible support that has two discernable members. Musher's patent teaches of only one discernable member of an edible baked or toasted product and cannot anticipate Applicant's claims.

Applicant's claims 182 and 192, as applied to respective independent claims 179 and 189, comprise novel physical structure and surprising results that Musher does not have and are hence submitted to be patentable and unobvious over the prior art reference to Musher.

**Musher's Structure Pieces are Situated in the Ice Cream, Not in the Support**

The Office notes that Musher further teaches the structure pieces around the lollipop, which include candy, can be placed concentrically (i.e. a circle around the lollipop) to improve support, or maneuvered in some other manner on the support.

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Applicant's claim 187 and 191 recite:

"running said two discernable edible members concentrically, parallel, twisted, or maneuvered within said composite candy support,..."

Musher does not comprise a composite edible support having two discernable members where the members are placed concentrically within the support, as do Applicant's claims 187 and 191. (See Musher's Figures 1-6). Musher's structure pieces (i.e. ice cream structure, above) are situated "on" (Office) the outside of his stick (not in it) beyond an edible coating for securing a portion of ice cream. Musher's support is not a composite support. Applicant's claims 187 and 191, as applied to independent claims 179 and 189, are submitted to be a fortiori and independently patentable over the teachings of Musher.

**Musher's Voids Reside in the Ice Cream Flake Structure and Not in the Support**

The Office further notes that Musher teaches a plurality of voids in the overall structure.

Applicant's claims 186, and 193 recite:

"further including a void in said composite candy support for allowing said frozen comestible to flow through said composite candy support for providing increased adherence of said frozen comestible to said composite candy support..."

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Musher's voids in Figure 6, between the structure pieces and lollipop, are voids in the cereal pieces, within the ice cream and are NOT voids in a support. There are no voids in Musher's support (see supports in Figures 1-6). Musher does not provide a void in a composite edible support having two discernable members for supporting a portion of ice cream, as do Applicant's novel claims 186, and 193. Applicant's claims 186 and 193, as applied to independent claims 179 and 189, comprise novel structure and show superior results and are respectfully submitted to be a fortiori and independently patentable over the reference to Musher.

The Office's objection Applicant's claims 179-182,184-187,189-198, as being anticipated by Musher is respectfully submitted to be improper. Applicant's independent claims 179, 189 and 195, comprise the novel physical structure of a composite candy support with two discernable members, and provide superior and unobvious results that Musher does not have. These claims are respectfully submitted to be of patentable merit. Applicant's dependent claims are respectfully submitted to be a fortiori and independently patentable over the reference to Musher, as applied to their respective independent claims. Applicant respectfully requests reconsideration and withdrawal of the objection to claims 179-182,184-187,189-198, as being anticipated by Musher, under section 35 U.S.C. sections 102 and 103.

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**Musher in View of Berg Does Not Show Applicant's Composite  
Support With A Mess Guard Under Section 103**

The Office notes that claims 188 and 194 are rejected under 35 U.S.C. 103(a) as being unpatentable over Musher (US 2217700) as applied to claims 179-182, 184-187, 189-198 above, further in view of Berg (US 3459296).

The Office notes that Musher is silent in teaching a protective inedible mess guard on the edible support and Berg teaches an inedible mess guard to avoid a messy mass during consumption of frozen confections on support members and catching drippings. The Office suggests that it therefore would have been obvious to modify Musher and include an inedible mess guard, since Berg teaches this will help to avoid a messy mass during the consumption of frozen confections on support members.

Applicant's claims 188 and 194, which recite:

"further including a protective mess guard on said composite candy support, for providing a physical barrier for effectively keeping fingers from melting ingredients and from getting messy,"

provide protective mess guards to an edible *composite* support.

Berg provides an inedible mess guard on an inedible stick.

Musher, as above under section 102, comprises a baked or toasted product, with only one discernable member. The modification of



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Musher's support with that of the teachings of Berg would render a supported confection having a baked or toasted support, having one discernable member, provided with an inedible protective mess guard for catching drippings and avoiding a messy mass during consumption of the confection. This modification does not comprise an edible support having two discernable members and therefore does not anticipate Applicant's claims 188 and 194, as applied to claims 179-182, 184-187, 189-198. Applicants claims 188 and 194 comprise novel physical structure, show superior results and are respectfully submitted to be of patentable merit over the combined teachings of Musher and Berg. Applicant respectfully requests further reconsideration and withdrawal of the objection as being anticipated by the combined teachings of Musher and Berg.

**The Modification of Musher in View of Hammond Does Not Show the Novel Physical Structure of Applicant's Claim 183**

The Office notes that claim 183 is rejected under 35 U.S.C. 103(a) as being unpatentable over Musher (US 2217700) as applied to claims 179-182, 184-187, 189-198, further in view of Hammond (US 2622784).

The Office also notes that Musher teaches ice cream on a support but is silent in teaching the ice cream has a second portion that

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includes a plurality of handles for holding with two hands. Hammond teaches ice cream on a support wherein the carton used to ship the ice cream serves as the mold and the ice cream block includes a multitude of sticks. The Office suggests, therefore, that it would have been obvious to include a plurality of supports in the ice cream of Musher and further obvious to include a second portion with a plurality of handles, since this would have required fewer total number of supports to insert for the same number of handles and would have simplified the manufacturing process.

Claim 183 recites: "wherein said second portion of said composite candy support comprises sufficient surface area so that a person can hold said composite candy support and said frozen comestible with a hand, said second portion further includes supplying two handles to said person, one for each hand."

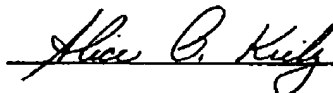
To the contrary, it would not have been obvious to modify the support of Musher to include a plurality of supports as the modification of Musher's support with the teachings of Hammond would render a supported frozen confection having a single baked or toasted edible support (Hammond teaches *one support* per confection, not a plurality of supports per confection - i.e. column 1, lls. 10-15, "individual products are formed by slicing the block so that a number of smaller blocks, *each equipped with a handle*, are produced," column 4, lls. 68-75, column 5, lls. 1-2), or as further modified, a frozen supported confection having

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one baked support with a plurality of *handles*, one for each hand. It would not have been obvious because the end result does not provide a composite support having two discernable edible members with a plurality of supports, is not advantageous over the prior art, does not meet Applicant's claim, and comprises no desirability to combine the references. Applicant therefore submits that claim 183, as applied to claims 179-182, 184-187, 189-198, comprises novel structure, illustrates superior results and is hence unobvious over the combined prior art teachings of Musher and Hammond. Applicant respectfully submits that the objection is improper and respectfully requests reconsideration and withdrawal of the objection.

For all the above reasons, Applicant submits that the claims are now in proper form, and that the claims all define patentably over the prior art. Therefore, Applicant submits that this application is now in condition for allowance, which action I respectfully solicit.

Very Respectfully,



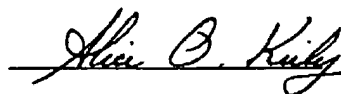
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Certificate of Facsimile: I certify that on the date below, this document and referenced attachments, will be faxed to the central fax number of 571-273-8300 to the United States Patent and Trademark Office "Commissioner for Patents" Arlington, Virginia 22313.

2005 December 6,



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